

ESTTA Tracking number: **ESTTA565820**Filing date: **10/18/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Acer Incorporated		
Entity	Corporation	Citizenship	Taiwan
Address	7F, No. 137, Sec. 2 Chien Kuo North Road Taipei, TAIWAN		

Attorney information	Robert W. Sacoff and Seth I. Appel Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 200 South Wacker Drive, Suite 2900 Chicago, IL 60606 UNITED STATES rws@pattishall.com, sia@pattishall.com, lrb@pattishall.com, lkn@pattishall.com Phone:(312) 554-8000
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Applicant Information

Application No	85937889	Publication date	10/15/2013
Opposition Filing Date	10/18/2013	Opposition Period Ends	11/14/2013
Applicant	WU QING 33 BEIYANTANG, XIAOQIAOCUN QINGYANGZHEN, JIANGYIN, 211400JIA CHINA		

Goods/Services Affected by Opposition

Class 009. First Use: 2010/06/14 First Use In Commerce: 2010/06/14 All goods and services in the class are opposed, namely: Computer monitors; Computer mouse in the nature of a trackpad; Computer mouse, namely, touchpads; Computer mouse, namely, trackballs; Computer networking hardware; Computer peripheral equipment; Computer screens; Data processing apparatus; Electric connections and connectors; Electrical sockets; Flat panel display screens; Mouse pads; Multi-outlet socket blocks; Notebook computers; Projection screens; Projection screens for movie films; Slide or photograph projection apparatus; Solar batteries; Television apparatus for projection purposes; TV monitors
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1475746	Application Date	05/19/1987
Registration Date	02/09/1988	Foreign Priority Date	NONE

Word Mark	ACER
Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1987/02/18 First Use In Commerce: 1987/02/18 PERSONAL AND BUSINESS COMPUTERS AND COMPUTER PROGRAMS, INCLUDING LOCAL AREA NETWORKING PROGRAMS, COMPUTER PERIPHERALS, NAMELY, MODEMS, PRINTERS, KEYBOARDS, DISK DRIVES, COMPUTER CIRCUIT BOARDS, POWER SUPPLIES, MONITORS, TERMINALS, DISKETTE STORAGE AND MAINTENANCE CASES, DATA PROCESSORS AND VOICE PROCESSORS

U.S. Registration No.	3290412	Application Date	08/29/2005
Registration Date	09/11/2007	Foreign Priority Date	NONE
Word Mark	ACER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2001/03/09 First Use In Commerce: 2001/03/09 LCD television; [DVD players; DVD recorders; stereo tuner;] home slide, movie, video, and LCD projectors; [gateway router in the nature of computer control hardware; smart digital phones; personal digital assistants; video game machine for use with televisions; cable television converters; internet phones; video phones; digital television sets; personal computers for use in automobiles; liquid crystal display computer monitors; computer hardware, namely, wireless access point devices; handheld computers; pc camera; digital still camera; dual mode digital camera; computer workstations comprising computers, computer monitors, computer keyboards, computer hardware, computer peripherals, and computer operating software; computer accessories namely, storage boxes;] server appliance for storage area network; [computer hardware; computer software and computer programs for management and operation of wireless telecommunications devices, computer software for accessing, searching, indexing, and retrieving information and data from global computer networks and global communication networks, and for browsing and navigating through web sites on said networks, and computer software for sending and receiving short messages and electronic mail and for filtering non-text information from the data;] personal computers; desktop computers; notebook computers; [handheld computers;] portable computers; laptop computers; [personal computer televisions, namely, personal computers for reception and playing of television programs;] mobile computers; network access server hardware; rack-mount servers; video-on-demand servers; voice over internet protocol communication servers; computer mother board; set-top boxes for use with computers; computer peripherals; computer keyboards; computer mouse; computer wireless keyboards; modems; computer fax and wireless modem cards; PCMCIA cards; computer peripheral cards, namely, Ethernet network cards; wireless network cards; computer hardware wireless devices, namely, electronic hand held units for the wireless receipt of transmission of data that may also have the capacity to transmit and receive voice communications; telecommunication devices, namely, telephones, mobile telephones and personal digital assistants; telephones; internet phones; mobile phones; wireless internet phones; low-power mobile phones; power supplies; switching power supplies; integrated circuits; computer disk drives; optical computer disk drives; computer memories; data storage equipment, namely, blank floppy disks, magnetic disks and optical disks, all featuring memory for computers; printed circuit boards; computer		

	interface boards; video display cards; VGA cards; cathode ray tube computer monitors; computer chips; network access server operating software; optical CD recorders; CD rewritable recorder; wireless devices, namely, electronic handled units for the wireless receipt of transmission of data that may also have the capacity to transmit and receive voice communications, scanners, printers, and communication servers]
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U.S. Registration No.	3735392	Application Date	01/25/2006
Registration Date	01/05/2010	Foreign Priority Date	NONE
Word Mark	ACER		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 002. First use: First Use: 2009/06/01 First Use In Commerce: 2009/06/01 Toner cartridges for printer use; filled ink cartridges for printer use</p> <p>Class 009. First use: First Use: 2009/06/01 First Use In Commerce: 2009/06/01 Printer, laser printer, ink jet printer, multifunction and all in one printer, parts for all the aforesaid goods; personal digital assistants, namely, electronic handheld units for the wireless receipt and/ or transmission of data that enable the user to keep track of or manage personal information and to transmit and receive voice, image and video communication; software for the synchronization of data between a remote station or unit and a fixed or remote station or unit and software which enables and provides one-way and two-way wireless connectivity to data; portable digital phones and software related thereto; personal digital assistant computers, namely, handheld electronic devices for the wireless receipt and/or transmission of data; software for the redirection of messages, e-mail, and/or other data from a personal computer or a server to one or more handheld electronic devices; computer software and program for management and operation of wireless telecommunications devices; computer software for accessing, searching, indexing and retrieving information and data from global computer networks and global communication networks, and for browsing and navigating through web sites on said networks; computer software for sending and receiving short electronic messages and electronic mail and for filtering non-text information from the data; digital cellular phones, namely, handheld electronic devices for data, voice, image and video communication; computer game software for mobile handsets; electronic game software for mobile handsets</p>		

Attachments	Notice of Opposition 2013-10-18.pdf(1490168 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Seth I. Appel/
Name	Seth I. Appel
Date	10/18/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 85/937889:

DXRACER

Published in the *Official Gazette* on October 15, 2013

ACER INCORPORATED,)	
)	
Opposer,)	Opposition No.
)	
v.)	
)	
WU QING,)	
)	
Applicant.)	


NOTICE OF OPPOSITION


Acer Incorporated ("Opposer"), a Taiwan corporation, having its principal place of business at 7F, No. 137, Sec. 2, Chien Kuo North Road, Taipei, Taiwan, R.O.C., believes it will be damaged by registration of the mark shown in Application Serial No. 85/937889 and opposes the same. The grounds for opposition are as follows:

1. Opposer is a well-known computer and electronics company. Since at least as early as 1987 and continuing through the present, Opposer ("Opposer" is used herein to include Acer Incorporated along with its predecessors and related companies) has been engaged in the manufacture and distribution of a wide range of electronics products, and has sold and offered for sale such products throughout the United States. Opposer's products under its ACER Mark include monitors, projectors, and a variety of computer hardware.

2. As result of Opposer's extensive sales, advertising and promotional efforts, consumers throughout the United States have come to recognize ACER as an identifier of Opposer and its products.

3. Opposer's longstanding trademark rights in its ACER Mark are reflected in part by its numerous U.S. trademark registrations, including the following:

MARK	REG. NO. (DATE)	GOODS/SERVICES
ACER	No. 1,475,746 (Feb. 9, 1988)	Class 9: "Personal and business computers and computer programs, including local area networking programs, computer peripherals, namely, modems, printers, keyboards, disk drives, computer circuit boards, power supplies, monitors, terminals, diskette storage and maintenance cases, data processors and voice processors"
	No. 3,290,412 (Sept. 11, 2007)	Class 9: "LCD television; home slide, movie, video, and LCD projectors; server appliance for storage area networks; personal computers; desktop computers; notebook computers; portable computers; laptop computers; mobile computers; network access server hardware"

MARK	REG. NO. (DATE)	GOODS/SERVICES
	No. 3,735,392 (Jan. 5, 2010)	<p>Class 2: "Toner cartridges for printer use; filled ink cartridges for printer use"</p> <p>Class 9: "Printer, laser printer, ink jet printer, multifunction and all in one printer, parts for all the aforesaid goods; personal digital assistants, namely, electronic handheld units for the wireless receipt and/ or transmission of data that enable the user to keep track of or manage personal information and to transmit and receive voice, image and video communication; software for the synchronization of data between a remote station or unit and a fixed or remote station or unit and software which enables and provides one-way and two-way wireless connectivity to data; portable digital phones and software related thereto; personal digital assistant computers, namely, handheld electronic devices for the wireless receipt and/or transmission of data; software for the redirection of messages, e-mail, and/or other data from a personal computer or a server to one or more handheld electronic devices; computer software and program for management and operation of wireless telecommunications devices; computer software for accessing, searching, indexing and retrieving information and data from global computer networks and global communication networks, and for browsing and navigating through web sites on said networks; computer software for sending and receiving short electronic messages and electronic mail and for filtering non-text information from the data; digital cellular phones, namely, handheld electronic devices for data, voice, image and video communication; computer game software for mobile handsets; electronic game software for mobile handsets"</p>

Print-outs from the U.S. Patent & Trademark Office's online records, showing the status and title of each of the above registrations, are attached as Exhibit A. Each of these registrations is valid and subsisting. Registration Nos. 1,475,746 and 3,290,412 are incontestable and constitute conclusive evidence of Opposer's exclusive right to use the registered marks for the goods specified in those registration under 15 U.S.C. §§ 1065 and 1115(b).

4. On May 21, 2013, Applicant filed an application (Serial No. 85/937889) to register the mark shown below ("Applicant's Mark"):



This application covers the following goods in Class 9:

Computer monitors; Computer mouse in the nature of a trackpad; Computer mouse, namely, touchpads; Computer mouse, namely, trackballs; Computer networking hardware; Computer peripheral equipment; Computer screens; Data processing apparatus; Electric connections and connectors; Electrical sockets; Flat panel display screens; Mouse pads; Multi-outlet socket blocks; Notebook computers; Projection screens; Projection screens for movie films; Slide or photograph projection apparatus; Solar batteries; Television apparatus for projection purposes; TV monitors.

5. Each of Opposer's registrations for its ACER Mark alleged in Paragraph 3 above has a priority date that precedes the filing of Application Serial No. 85/937889, and, upon information and belief, precedes Applicant's use, if any, of Applicant's Mark.

6. Opposer also has established common law rights in its ACER Mark. These common law rights also predate the filing of Application Serial No. 85/937889 and, upon information and belief, predate Applicant's use, if any, of Applicant's Mark.

7. Opposer has not consented to Applicant's use or registration of Applicant's Mark.

8. Applicant's Mark so resembles Opposer's ACER Mark as to be likely, when used on or in connection with the goods identified in Application Serial No. 85/937889, to cause confusion, or to cause mistake, or to deceive.

9. Accordingly, the Board should refuse registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that this opposition be sustained; that Application Serial No. 85/937889 be rejected; and that no registration be issued to Applicant.

Opposer hereby appoints the law firm of Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP to act as attorneys for Opposer in this matter, with full power to prosecute this opposition proceeding, to transact all relevant business with the United States Patent and Trademark Office and in the United States courts, and to receive all official communications. Opposer submits the requisite filing fee of \$300.00. Please debit any deficiency from or credit any overpayment to Account No. 16-0650.

Date: October 18, 2013

Respectfully submitted,

PATTISHALL, MCAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

/Seth I. Appel/

By: _____

Robert W. Sacoff
Seth I. Appel
200 South Wacker Drive, Suite 2900
Chicago, Illinois 60606
(312) 554-8000

*Attorneys for Opposer
Acer Incorporated*

EXHIBIT A

STATUS DOCUMENTS

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Mark: ACER

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US Serial Number: 73661739

Application Filing Date: May 19, 1987

US Registration Number: 1475746

Registration Date: Feb. 09, 1988

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Dec. 13, 2007

Publication Date: Nov. 17, 1987

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Owner Name: ACER INCORPORATED

Owner Address: 7F, No. 137, SEC. 2, Chien Kuo North Rd.

TAIPEI

TAIWAN

Legal Entity Type: CORPORATION

State or Country Where TAIWAN

Organized:[Attorney/Correspondence Information](#)[Prosecution History](#)[Maintenance Filings or Post Registration Information](#)[TM Staff and Location Information](#)[Assignment Abstract Of Title Information - Click to Load](#)[Proceedings - Click to Load](#)

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Mark: ACER



US Serial Number: 78702329

Application Filing Date: Aug. 29, 2005

US Registration Number: 3290412

Registration Date: Sep. 11, 2007

Register: Principal

Mark Type: Trademark

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Sep. 21, 2013

Publication Date: Jun. 26, 2007

Mark Information**Related Properties Information****Goods and Services****Basis Information (Case Level)****Current Owner(s) Information**

Owner Name: Acer Incorporated

Owner Address: 7F, No. 137, Sec. 2, Chien Kuo Rd.
Taipei
TAIWAN

Legal Entity Type: CORPORATION

State or Country Where
Organized: TAIWAN

Attorney/Correspondence Information

Prosecution History

Maintenance Filings or Post Registration Information

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Mark: ACER



US Serial Number: 78981275

Application Filing Date: Jan. 25, 2006

US Registration Number: 3735392

Registration Date: Jan. 05, 2010

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jan. 05, 2010

Publication Date: May 15, 2007

Notice of Allowance Date: Aug. 07, 2007

Mark Information

Related Properties Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Owner Name: Acer Incorporated

Owner Address: 7F, No. 137, Sec. 2, Chien Kuo N. Rd.
Taipei
TAIWAN

Legal Entity Type: CORPORATION

State or Country Where
Organized: TAIWAN

Attorney/Correspondence Information

Prosecution History

TM Staff and Location Information

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CERTIFICATE OF TRANSMISSION

I, Seth I. Appel, an attorney for Opposer, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was electronically transmitted to the Trademark Trial and Appeal Board on this 18th day of October, 2013.

/Seth I. Appel/
Seth I. Appel

CERTIFICATE OF SERVICE

I, Seth I. Appel, an attorney for Opposer, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon Applicant, at Applicant's correspondence address of record below, by first-class mail, on this 18th day of October, 2013, postage prepaid.

Wu Qing
33 Beiyantang, Xiaoqiaocun
Qingyangzhenm, Jiangyin
China
211400JIANGSU

/Seth I. Appel/
Seth I. Appel